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SIPDIS

STATE FOR EAP/ANP, EB/TPP/BTA, STATE PASS TO USTR
BWEISEL, GBLUE AND DBELL, COMMERCE FOR ITA/MAC/AP/OSAO,
TREASURY FOR OASIA, PACOM FOR J01E/J2/J233/J5/SJFHQ

E.O. 12958: N/A
TAGS: ECON ETRD EFIN APEC PGOV PREL NZ
SUBJECT: NEW ZEALAND - 2009 NATIONAL TRADE ESTIMATE
REPORT

REFTEL) STATE 88685

¶1. (U) Following is Post's submission for the 2009
National Trade Estimate Report (NTE) regarding New
Zealand per request reftel. We understand that
Washington agencies will provide updated trade and
investment data.

¶2. Begin text of NTE submission:

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a
result of several rounds of unilateral tariff cuts that
began in the mid-1980s and continued through the
current Labour government, first elected in 1999. The
government suspended additional reductions until July
¶2005. The New Zealand government announced in
September 2003, that it would again resume unilateral
tariff reductions starting July 1, 2006. Under this
unilateral tariff reduction program, New Zealand has
reduced its highest tariff rates to 12.5 percent
beginning July 1, 2008 and will further reduce these
tariffs to 10 percent by July 1, 2009. These top rates
apply mostly to clothing, footwear, and carpeting. Ad
valorem tariffs on all other dutiable goods were
reduced to 5 percent beginning July 1, 2008.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Regulations on Genetically Modified Organisms

New Zealand's Environmental Risk Management Authority
(ERMA), an independent agency, is responsible for
assessing and deciding on applications to introduce new
organisms, including genetically modified organisms
(GMOs), into New Zealand. ERMA assesses applications
on a case-by-case basis and can issue four types of
approvals: 1) initial development in containment (such
as in a laboratory or glasshouse), 2) outdoor
development of field tests (in containment), 3)
conditional release, and 4) full, unconditional release
(with no controls).

ERMA makes decisions on the importation and domestic
use of GMOs on the basis of a thorough assessment of
the potential risks and benefits posed by the
organisms, under the stringent requirements of the
Hazardous Substances and New Organisms (HSNO) Act 1996.

If approval is given for development in containment, or for importation into containment, further approval must be given before an organism can be field tested, conditionally released or fully released. Approval is only given if, in the opinion of ERMA, the benefits of the GMO outweigh the risks.

Since 1998, ERMA has granted approximately 15 approvals for contained field trials of genetically modified crops. Of these, approximately five have been completed, six are still ongoing, and the remaining approvals have either ceased or were unused for various reasons. However, to date, there have been no applications for either a conditional or a full release of products derived by the use of biotechnology in New Zealand. Many attribute this to the onerous, costly and unproven nature of the GM regulatory framework, which includes a lengthy public consultation process. As the first applicant for a GM release will likely come under intensive public scrutiny and pressure from a number of different groups, some New Zealand companies have opted to go through the regulatory approval process in other countries.

The most recent approval granted by ERMA was in May 2007 for Crop and Food Research to conduct a contained field test for broccoli, cabbage, cauliflower, and forage kale derived by the use of biotechnology and engineered for pest resistance. Three years ago, ERMA approved an application from the same organization to field test onions derived by the use of biotechnology.

The United States has raised concerns about New Zealand's regulatory policies regarding genetically modified organisms in meetings under the United States-New Zealand Trade and Investment Framework Agreement (TIFA) and other fora and will continue to press New Zealand on these issues.

Genetically Modified Food Approval

Foods with genetically modified content can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ). FSANZ, a statutory authority operating under the Food Standards Australia New Zealand Act 1991, was established in 2002. FSANZ is responsible for setting food standards that govern the content and labeling of foods sold in both New Zealand and Australia. The standards cover food composition, labeling and contaminants, including microbiological limits. In New Zealand, the New Zealand Food Safety Authority (NZFSA) enforces these standards.

A mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard, which was established under the Food Act of 1981, prohibits the sale of food produced using genetic modification unless such food has been assessed by FSANZ and listed in the food code standard. As of July 2008, FSANZ has received a total of 43 applications for the assessment of genetically modified foods. Of these, 35 applications had been approved and 6 are under review. Two requests had been withdrawn.

Labeling of Genetically Modified Food

Mandatory labeling requirements for genetically modified (GM) foods took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived from genetic modification must be so labeled.

Meeting the requirements of New Zealand's food labeling

regulations places a burden on manufacturers, packers, importers, and retailers to take reasonable steps to determine if the food is genetically modified or has a GM ingredient and to ascertain if the GM food is approved. The importer usually has the primary responsibility for ensuring the accuracy of the label and compliance with GM food labeling requirements. Wholesalers and retailers usually demand GM-free declarations from their supplier, which passes liability in the event of GM labeling non-compliance back to the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system.

Sanitary and Phytosanitary Measures (SPS)

New Zealand maintains a regime of SPS controls for virtually all imported animal and plant products. The United States and New Zealand continue to discuss specific SPS issues that impact trade in both directions as part of the annual TIFA dialogue and in other fora.

In July 2006, Biosecurity New Zealand adopted a new system for the funding and management of import health standards. While the new system is more transparent, it is resource intensive and Biosecurity New Zealand is still only able to complete only about 10% of the requests for new import health standards. Biosecurity New Zealand announced in 2007 that it would only take applications for the development of import health standards from the competent authorities of exporting nations and not from domestic constituents. It is currently conducting a review of current procedures with a view toward changing them in the future.

At present, Biosecurity New Zealand is working on several import health standards for U.S. products including stone fruit (plums, peaches, nectarines, and apricots) from the Pacific Northwest, pork, cherries and lemons.

On March 3, 2006, the United States requested market access for stone fruit from the Pacific Northwest. (Stone fruit from California is currently allowed entry into New Zealand.) Biosecurity New Zealand put the U.S. request on its work program in 2007 and expects to announce a draft import health standard in early 2009.

New Zealand currently maintains restrictions on U.S. pork meat and meat products due to concerns related to the Porcine Reproductive and Respiratory Syndrome (PRRS) virus. Having concluded a draft import health standard, New Zealand is proposing an import standard that will allow unrestricted importation of uncooked, consumer-ready, high-value cuts of pork meat from the United States. However, New Zealand is maintaining restrictions on other types of pork meat and meat products, as it asserts that the PRRS virus risks associated with these products is non-negligible. The import health standard is expected to be finalized in ¶2009.

New Zealand continues to suspend imports of US poultry meat (except canned product) due to its restrictions on countries that have infectious bursal disease - a foreign animal disease to New Zealand that is present in most poultry exporting countries of the world.

NZFSA requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). In February 2007

NZFSA announced a move to modernize its food safety importing requirements for beef and beef products in light of the new science that surrounds BSE. Among other things, the new measures enable New Zealand to categorize the BSE risk status of countries exporting to New Zealand. Once these measures are finalized, the current requirement to assess U.S. products on a case-by-case basis is expected to be eliminated.

On December 6, 2007, New Zealand filed a WTO case against Australia with respect to Australia's phytosanitary import requirements for New Zealand apples. The United States has entered the dispute as a third party.

GOVERNMENT PROCUREMENT

New Zealand is not a signatory to the WTO Government Procurement Agreement but has recently applied for observer status at the WTO Committee on Government Procurement. The New Zealand Government is keeping the issue of its participation in the Government Procurement Agreement under review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Copyrights

The Copyright (New Technologies) Amendment Act 2008 was passed April 15, 2008. Most of its provisions came into force in October 2008. There were a number of changes made to the Bill following its report back from the Parliamentary Select Committee and prior to its final passage by Parliament. In particular, changes were made to the Internet Service Providers' (ISP) liability provisions in response to concerns raised by industry. Key changes were:

-- That an ISP will not be protected from liability if it has reason to believe that material on its clients? websites is infringing, regardless of whether they have received a notice from a rights-holder to that effect;

-- A requirement for ISPs to have and reasonably implement a policy for termination of the accounts of repeat infringers was reinstated into the Bill; and

-- The offence provision for sending false or misleading notices to ISPs which was inserted at Select Committee was removed from the Bill.

The provisions relating to technological protection measures (TPMs) are largely unchanged. The government of New Zealand maintains that the Act reflects the concern that TPMs should not be protected to the extent that they restrict acts which are not protected by copyright law. The provisions of the Act dealing with TPM have been drafted to accommodate access to a work for non-infringing purposes, including the exercise of a permitted act, is retained. The U.S. maintains that the TPM provisions inadequately protects against the distribution of circumvention (hacking) devices and only prohibits trafficking in circumvention devices where the trafficker has knowledge, or reason to believe, that the device will, or is likely to be, used for infringement.

Patent Protection

The grant of patents in New Zealand is governed by the Patents Act 1953. A new Patents Bill was introduced to Parliament on July 9 2008 and will, when enacted, replace the 1953 Act. It is expected that the Bill will be referred to a Select Committee, which will

likely seek public submissions as part of its consideration of the Bill in early 2009.

The Patents Bill (2008) requires that, to be patentable, an invention must be a "manner of manufacture", be novel, involve an inventive step, and be useful. The Bill excludes certain subject matter from patent protection:

-- Human beings and biological methods for their generation;

-- Methods of treatment of human beings by surgery or therapy, or methods of diagnosis practiced on human beings;

-- Inventions whose commercial exploitation would be contrary to morality or public policy;

-- Plant varieties.

The "prior art base" for novelty and inventive step includes all material made available to the public in any form anywhere in the world. This replaces the "local" novelty standard applied under the 1953 Act. Patent applications will be examined for inventive step and utility; there is no examination for these criteria under the 1953 Act.

The Patent term will remain at twenty years from filing with no provision for extension. The Bill will remove the 1953 Act provision for pre-grant opposition and will introduce a "re-examination" provision which can be invoked at any time after acceptance of an application. Re-examination will be limited to issues of novelty and inventive step based on documentary prior art. The 1953 Act post-grant opposition provisions will be expanded and it will be possible to invoke post-grant opposition at any time during the patent term. The current provision for revocation of a patent through the courts will be retained.

The Bill also provides for the establishment of a Maori Advisory Committee to advise the Commissioner of Patents where patent applications involve traditional knowledge and indigenous plants and animals.

The New Zealand Medicines and Medical Devices Safety Authority (Medsafe), a business unit of the Ministry of

Health, regulates therapeutic products in New Zealand. Completed applications for marketing approval for prescription medicines received by Medsafe since August 2006 have taken an average of 198 days to process. On average, 66 days of this time was taken by companies to respond to queries raised by the regulator.

The New Zealand pharmaceutical trade association - Researched Medicines Industry (RMI) expressed its concern that pending patent legislation would allow under the "specific experimental use exception" what it perceives to be an infringement. While RMI admits that it is uncertain of the intention or scope of the provision they believe there is a potential for the property rights of pharmaceutical companies to be compromised by patented product data being accessed by generic drug manufacturers and others under the guise of "experimental use."

SERVICES BARRIERS

Media

Radio and television broadcasters have adopted voluntary local content targets after the New Zealand

government made it clear that it would otherwise pursue mandatory quotas. New Zealand government officials have said they are sensitive to the implications of quotas under the GATS, but nonetheless they reserve the right to impose them.

Telecommunications

New Zealand has, over the past decade, moved from relying primarily on the courts to regulate the telecommunications sector under general antitrust statutes (that proved time consuming and ineffective) to the introduction of enforceable sector specific rules. New Zealand amended the 2001 Telecommunications Act in 2006 (the Act), separating Telecom New Zealand (Telecom) into separate access network services, wholesale, and retail business units. The separation is aimed at promoting competition in the telecommunications market. The Act requires Telecom to operate its Access Network Services unit on a stand-alone basis and its wholesale and retail units at arms-length from one another. As part of the operational separation process, the Minister of Communications and Information Technology (Minister for Communications) issued a determination on September 26, 2007, requiring Telecom to prepare a draft separation plan. Telecom submitted a plan that was opened for public comment in January 2008. Taking into account comments received, the Minister for Communications approved Telecom's amended Separation Plan on 30 March 2008. The determination also set requirements for providing Access Network Services over existing copper, and future fiber and wireless access networks to ensure comprehensive service coverage and a forward-looking approach.

Other key features of the Act require Telecom to provide unbundled local loop and unbundled bit stream access, "naked" DSL services, and unbundled backhaul services; improve transparency of Telecom's costs and pricing by requiring separate wholesale and retail accounting; and enhance the Telecommunications Commissioner's ability to enforce effective and timely access to regulated services. The Act also empowers the Commerce Commission to set terms and conditions of supply for regulated services and to resolve supply terms and conditions for regulated services, rather than only for individual operators. It empowers the Telecommunications Commissioner to initiate determinations of the terms and conditions of regulated multi-network services. In addition, the Act requires Telecom to make relevant services, especially unbundled local loops and unbundled bit stream, available to all market participants on equivalent terms.

With respect to mobile termination rates, the Economic Development Minister announced in April 2007 that he would accept voluntary and separate binding commitments from Vodafone and Telecom to reduce such rates to more reasonable levels. The commitments also require operators benefiting from such reductions to pass through reductions to their customers. Based on such commitments and over a five year period, Telecom has offered to reduce its mobile termination rate from 20 New Zealand cents per minute (cpm) to 12 cpm, and Vodafone has offered to reduce its mobile termination rate from 20 cpm to 14 cpm. This outcome contrasts with the 2005 Commerce Commission recommendation that rates be reduced immediately to 15 cpm by 2006, which was not implemented due to legal challenges brought by mobile operators.

INVESTMENT BARRIERS

Investment Screening

New Zealand maintains investment screening requirements, and has not blocked any foreign investment approvals for business investment since ¶1984. New Zealand's Overseas Investment Office (OIO) screens foreign investments that exceed NZ$100 million and represent 25 percent or more of the equity in a New Zealand enterprise, foreign investments in land defined as sensitive within the Overseas Investment Act 2005, and foreign investment in fishing. In August 2005, the New Zealand government enacted The Overseas Investment Act that liberalized the investment screening regime by refocusing screening on assets of critical interest. The review also strengthened the monitoring and enforcement of conditions of consent made under the Act. Investors are also required to satisfy an "investor test." In particular, an investor must be of good character, must not be excluded from entering New Zealand under the Immigration Act, and must be able to display both financial commitment and business acumen. The United States has raised concerns about the continued use of this screening mechanism.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continues to raise concerns regarding the level of New Zealand Government support for research and development of innovative pharmaceutical products.

Medicines must be approved by the regulator, Medsafe, before they can be marketed in New Zealand, or considered for subsidy by the New Zealand government. New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand-alone Crown entity, administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government. The schedule also specifies criteria for prescribing a product listed for reimbursement. PHARMAC accounts for the majority of New Zealand's expenditures on prescription drugs. The New Zealand government also supports hospitals' pharmaceutical expenditures, bringing its share of total spending on prescription drugs in the country to about 80 percent.

New Zealand does not restrict the sale of non-subsidized pharmaceuticals. Most private medical insurance companies, however, will not cover the cost of non-subsidized medicines and doctors are often reluctant to prescribe them to patients who would have to pay the cost themselves. As New Zealand's Primary Health Care Strategy is designed to improve access to health services through measures including cost reduction, practitioners are encouraged to prescribe subsidized medicines. PHARMAC's decisions, by virtue of the agency's functions, have a major impact on the price of subsidized medicines, while pharmaceutical companies' pricing policies influence the price of

unsubsidized medicines. Pharmaceutical companies may choose not to market a medicine in New Zealand if it does not receive a government subsidy. This may reflect the small size of the New Zealand market. U.S. industry continues to have concerns about the transparency, predictability, and accountability of PHARMAC's processes.

The New Zealand pharmaceutical trade association - Researched Medicines Industry (RMI) has expressed its concern that New Zealand lags in the desired level of investment in innovative medicines relative to other OECD countries. As a result, RMI feels that

pharmaceutical companies have largely withdrawn from clinical trials due largely to the "harshness" of the market. RMI points to a drop in levels of investment noting that 10 years ago over NZ$100 million was invested annually in clinical trials which has currently sunk to NZ$15 million per year.

In October 2005, the United Future Party announced that it had secured an agreement from the Labour Party to develop a national medicines strategy as part of Labour's coalition negotiations to form a government. Following extensive consultation, the Government released the medicines strategy (Medicines New Zealand) and an associated action plan in December 2007. The strategy is intended to provide a framework to support sound decision-making over time. It is based on principles (equity, effectiveness, confidence, value for money, affordability and transparency), and aims to deliver a transparent and coherent approach to medicines issues in New Zealand. The outcomes sought from the action plan are quality, safe and effective medicines for New Zealanders; access to medicines; and optimal use of medicines. A portion of the plan was implemented in 2008 with a NZ$17 million increase in PHARMAC's budget but the full implementation is expected in 2011.

END TEXT.

McCormick